

EXHIBIT 4

最高人民法院关于司法解释工作的规定

Provisions of the Supreme People's Court on the Work Concerning Judicial Interpretation

颁布机关: 最高人民法院
Promulgating Institution: Supreme People's Court

文 号: 法发[2021]20号
Document Number: Fa Fa [2021] No.20

颁布时间: 06/09/2021
Promulgating Date: 06/09/2021

实施时间: 06/16/2021
Effective Date: 06/16/2021

效力状态: 有效
Validity Status: Valid

(2006年12月11日最高人民法院审判委员会第1408次会议通过自2007年4月1日起施行。根据2021年6月8日最高人民法院审判委员会第1841次会议通过的《最高人民法院关于修改〈最高人民法院关于司法解释工作的规定〉的决定》修正该决定自2021年6月16日起施行)

一、一般规定

(Adopted at the 1408th Meeting of the Judicial Committee of the Supreme People's Court on December 11, 2006, and effective on April 1, 2007; revised according to the Decision of the Supreme People's Court on Revising the Provisions of the Supreme People's Court on the Work Concerning Judicial Interpretation adopted at the 1841st Meeting of the Judicial Committee of the Supreme People's Court on June 8, 2021, and effective on June 16, 2021)

I. General Provisions

第一条 为进一步规范和完善司法解释工作,根据《中华人民共和国人民法院组织法》、《中华人民共和国各级人民代表大会常务委员会监督法》和《全国人民代表大会常务委员会关于加强法律解释工作的决议》等有关规定,制定本规定。

Article 1 In order to further regulate and perfect the work concerning judicial interpretation, these Provisions are formulated in accordance with the "Organic Law of the People's Courts of the People's Republic of China", the "Law of the People's Republic of China on the Supervision of the Standing Committees of the People's Congresses at Various Levels", the "Decision of the Standing Committee of the National People's Congress on Strengthening the Work Concerning Judicial Interpretation" and other relevant provisions.

第二条 人民法院在审判工作中具体应用法律的问题,由最高人民法院作出司法解释。

Article 2 The Supreme People's Court shall formulate the judicial interpretation on the specific application of law in the administration of justice by the people's courts.

第三条 司法解释应当根据法律和有关立法精神,结合审判工作实际需要制定。

Article 3 The judicial interpretation shall be formulated in accordance with laws and relevant legislative spirit incorporating into the practical need in the administration of justice.

第四条 最高人民法院发布的司法解释,应当经审判委员会讨论通过。

Article 4 The judicial interpretation promulgated by the Supreme People's Court shall be deliberated and adopted by the Judicial Committee.

第五条 最高人民法院发布的司法解释,具有法律效力。

Article 5 The judicial interpretation formulated and promulgated by the Supreme People's Court shall be legally effective.

第六条 司法解释的形式分为“解释”、“规定”、“规则”、“批复”和“决定”五种。

对在审判工作中如何具体应用某一法律或者对某一类案件、某一类问题如何应用法律制定的司法解释,采用“解释”的形式。

根据立法精神对审判工作中需要制定的规范、意见等司法解释,采用“规定”的形式。

对规范人民法院审判执行活动等方面的司法解释,可以采用“规则”的形式。

对高级人民法院、解放军军事法院就审判工作中具体应用法律问题的请示制定的司法解释,采用“批复”的形式。

修改或者废止司法解释,采用“决定”的形式。

Article 6 Judicial interpretations shall be classified into five types as "Interpretation", "Provisions", "Rules", "Reply" and "Decision".

As to how to specifically apply a certain piece of law or how to apply judicial interpretation formulated according to law on a specific type of case or issue in administration of justice, the format of "Interpretation" shall be adopted to the judicial interpretation.

The regulation or opinions need to be formulated in administration of justice based on the legislative spirit shall adopt the format of "Provisions".

The judicial interpretations regulating the trial practices of people's courts shall adopt the format of "Rules".

With regard to the judicial interpretation formulated for requesting the higher people's courts or the military courts of the People's Liberation Army for direction on the specific application of laws in the trial, as the format of "Reply" shall be adopted.

With regard to the amendment or the repeal to a judicial interpretation, the format of "Decision" shall be adopted.

第七条 最高人民法院与最高人民检察院共同制定司法解释的工作,应当按照法律规定和双方协商一致的意见办理。

Article 7 The work of the Supreme People's Court and the Supreme People's Procuratorate for jointly formulating the judicial interpretation shall be conducted in accordance with the provisions of law and the unanimously agreed opinion by both parties.

第八条 司法解释立项、审核、协调等工作由最高人民法院研究室统一负责。

Article 8 The research office of the Supreme People's Court shall be responsible for the proposal, examination and verification, and coordination of the judicial interpretations in a centralized way.

二、立项

II. Proposal

第九条 制定司法解释,应当立项。

Article 9 A proposal shall be set in formulating the judicial interpretations.

第十条 最高人民法院制定司法解释的立项来源:

- (一)最高人民法院审判委员会提出制定司法解释的要求;
- (二)最高人民法院各审判业务部门提出制定司法解释的建议;
- (三)各高级人民法院、解放军军事法院提出制定司法解释的建议或者对法律应用问题的请示;
- (四)全国人大代表、全国政协委员提出制定司法解释的议案、提案;
- (五)有关国家机关、社会团体或者其他组织以及公民提出制定司法解释的建议;
- (六)最高人民法院认为需要制定司法解释的其他情形。

基层人民法院和中级人民法院认为需要制定司法解释的,应当层报高级人民法院,由高级人民法院审查决定是否向最高人民法院提出制定司法解释的建议或者对法律应用问题进行请示。

Article 10 The origins of proposal to the Supreme People's Court to formulate judicial interpretations shall be:

(1) The Judicial Committee of the Supreme People's Court shall put up a request to formulate judicial interpretations;

(2) various division of administration of justice under the Supreme People's Court shall submit their suggestion for formulating judicial interpretations;

(3) various higher people's courts or the military courts of the People's Liberation Army shall submit the suggestion for formulating judicial interpretations or request for the specific application of laws;

(4) the members of the National People's Congress and the members of the Chinese People's Political Consultative Conference shall submit the bill or proposal for formulating judicial interpretations;

(5) relevant state organs, social associations or other organizations and citizens shall submit the suggestions for formulating judicial interpretations; and

(6) other circumstances deemed by the Supreme People's Court to be necessary.

If the basic people's courts and the intermediate people's courts deem the formulation of judicial interpretation to be necessary, they shall report it to the higher people's courts level by level. The higher people's courts shall examine and decide whether or not to submit the suggestion of formulating judicial interpretations or make request for the specific application of laws to the Supreme People's Court.

第十一条 最高人民法院审判委员会要求制定司法解释的,由研究室直接立项。

对其他制定司法解释的立项来源,由研究室审查是否立项。

Article 11 If the judicial committee of the Supreme People's Court requests to formulate the judicial interpretation, the proposal shall be directly formed by the research office.

With regard to other origins for formulating judicial interpretations, the research office shall examine if a proposal shall be formed.

第十二条 最高人民法院各审判业务部门拟制定“解释”、“规定”类司法解释的,应当于每年年底前提出下一年度的立项建议送研究室。

研究室汇总立项建议,草拟司法解释年度立项计划,经分管院领导审批后提交审判委员会讨论决定。

因特殊情况,需要增加或者调整司法解释立项的,有关部门提出建议,由研究室报分管院领导审批后报常务副院长或者院长决定。

Article 12 If various division of administration of justice under the Supreme People's Court intends to formulate the judicial interpretation in the type of "Interpretation" or "Decision", it shall submit the recommendation of the proposal of next year to the research office by the end of each year.

The research office shall centralized the recommendation of the proposal, draft the annual proposal plans of judicial interpretations, and submit it to the Judicial Committee for deliberation and decision upon the approval of the supervising court leader.

If it is necessary to add or amend the judicial interpretation proposal due to special circumstances, the relevant department shall propose the recommendation which shall be decided by the deputy vice president or the president of the court after being submitted by the research office to the supervising court leaders for approval.

第十三条 最高人民法院各审判业务部门拟对高级人民法院、解放军军事法院的请示制定批复的,应当及时提出立项建议,送研究室审查立项。

Article 13 If various division of administration of justice under the Supreme People's Court intends to formulate the reply to the request of the higher people's courts or the military courts of the People's Liberation Army, it shall promptly present the proposal recommendation and send it to the research office for examination.

第十四条 司法解释立项计划应当包括以下内容:立项来源,立项的必要性,需要解释的主要事项,司法解释起草计划,承办部门以及其他必要事项。

Article 14 The proposal plan of judicial interpretations shall include: the origin of proposal, necessity of the proposal, major issues need to be interpreted, drafting plan of judicial interpretations, undertaking department and other necessary issues.

第十五条 司法解释应当按照审判委员会讨论通过的立项计划完成。未能按照立项计划完成的,起草部门应当及时写出书面说明,由研究室报分管院领导审批后提交审判委员会决定是否继续立项。

Article 15 The formulation of judicial interpretations shall be completed in accordance with the proposal plan deliberated and adopted by the Judicial Committee. As to the formulation of the judicial interpretations failing to be completed in accordance with the proposal plan, the drafting department shall promptly issue written explanation, and the research office shall, upon the approval of the supervising court leader, submit it to the judicial committee for further decision of whether to continue the proposal.

三、起草与报送

III. Drafting and Submittance

第十六条 司法解释起草工作由最高人民法院各审判业务部门负责。

涉及不同审判业务部门职能范围的综合性司法解释,由最高人民法院研究室负责起草或者组织、协调相关部门起草。

Article 16 Various division of administration of justice under the Supreme People's Court shall be responsible for the drafting work of judicial interpretations.

The research office of the Supreme People's Court shall draft, or organize or coordinate with other relevant departments to draft the integrated judicial interpretations which involve the functions of different divisions of administration of justice.

第十七条 起草司法解释,应当深入调查研究,认真总结审判实践经验,广泛征求意见。

涉及人民群众切身利益或者重大疑难问题的司法解释,经分管院领导审批后报常务副院长或者院长决定,可以向社会公开征求意见。

Article 17 To draft the judicial interpretations, a thorough investigation and research shall be done,

the practical experience in administration of justice shall be conscientiously concluded and public opinions shall be solicited.

For the judicial interpretations concerning vital interests of the people or major difficulty, public opinion may be broadly solicited after such decision is made by the deputy vice president or the president upon approval by the supervising court leaders.

第十八条 司法解释送审稿应当送全国人民代表大会相关专门委员会或者全国人民代表大会常务委员会相关工作部门征求意见。

Article 18 The judicial interpretation draft under examination shall be submitted to relevant special committee of the National People's Congress or the relevant department under the Standing Committee of the National People's Congress for soliciting opinions.

第十九条 司法解释送审稿在提交审判委员会讨论前,起草部门应当将送审稿及其说明送研究室审核。

司法解释送审稿及其说明包括:立项计划、调研情况报告、征求意见情况、分管副院长对是否送审的审查意见、主要争议问题和相关法律、法规、司法解释以及其他相关材料。

Article 19 Before submitting the judicial interpretation draft for examination to the judicial committee for deliberation, the drafting department shall send it and the explanation thereof to the research office for examination.

The judicial interpretation draft for examination and the explanation thereof shall include: proposal plan, investigation report, summary of solicited opinions, verification opinions of the supervising vice president on whether or not to send it for examination, major issues in dispute and the relevant laws, regulations and judicial interpretations as well as other relevant materials.

第二十条 研究室主要审核以下内容:

- (一)是否符合宪法、法律规定;
- (二)是否超出司法解释权限;
- (三)是否与相关司法解释重复、冲突;
- (四)是否按照规定程序进行;
- (五)提交的材料是否符合要求;
- (六)是否充分、客观反映有关方面的主要意见;
- (七)主要争议问题与解决方案是否明确;
- (八)其他应当审核的内容。

研究室应当在一个月内提出审核意见。

Article 20 The research office shall mainly examine and verify the following contents:

- (1) whether it complies with the Constitution and the provisions of laws;
- (2) whether it exceeds the limits of authority of judicial interpretation;
- (3) whether it overlaps or conflicts with relevant judicial interpretations;
- (4) whether it is formulated in compliance with the prescribed procedure;
- (5) whether the materials submitted comply with the requirements;
- (6) whether it fully and objectively reflects the major opinions of relevant aspects;
- (7) whether the major disputed issues and solution schemes are definite; and
- (8) other contents ought to be verified.

The research office shall present verification opinions within one month.

第二十一条 研究室认为司法解释送审稿需要进一步修改、论证或者协调的,应当会同起草部门进行修改、论证或者协调。

Article 21 Where the research office deems the examination draft of the judicial interpretations to be necessary for further amendment, demonstration or coordination, it shall conduct the amendment, demonstration or coordination jointly with the drafting department.

第二十二条 研究室对司法解释送审稿审核形成草案后,由起草部门报分管院领导和常务副院长审批后提交审判委员会讨论。

Article 22 After the research office formulated the draft of the judicial interpretation from the examination draft, the drafting department shall submit it to the judicial committee for deliberation upon the examination and approval of the supervising court leaders and the deputy vice president.

四、讨论

IV. Deliberation

第二十三条 最高人民法院审判委员会应当在司法解释草案报送之次日起三个月内进行讨论。逾期未讨论的,审判委员会办公室可以报常务副院长批准延长。

Article 23 The judicial committee of the Supreme People's Court shall deliberate the draft of the judicial interpretation within three months as of the subsequent date of receipt of the draft. If there is no deliberation after expiration of the said period, the general office of the judicial committee may apply for time extension at the deputy vice president.

第二十四条 司法解释草案经审判委员会讨论通过的,由院长或者常务副院长签发。

司法解释草案经审判委员会讨论原则通过的,由起草部门会同研究室根据审判委员会讨论决定进行修改,报分管副院长审核后,由院长或者常务副院长签发。

审判委员会讨论认为制定司法解释的条件尚不成熟的,可以决定进一步论证、暂缓讨论或撤销立项。

Article 24 The draft of the judicial interpretation which was deliberated and adopted by the judicial committee shall be signed by the president or the deputy vice president.

If the draft of the judicial interpretation was basically adopted upon the deliberation by the judicial committee, it shall be revised by the drafting department jointly with the research office according to the decision of the judicial committee, and signed by the president or the deputy vice president upon the verification of the supervising vice president.

Where the judicial committee regard the conditions for formulating the judicial interpretation to be immature, it may decide to further hold a demonstration, suspend deliberation or withdraw the proposal.

五、发布、施行与备案

V. Promulgation, Implementation and Filing

第二十五条 司法解释以最高人民法院公告形式发布。

司法解释应当在《最高人民法院公报》和《人民法院报》刊登。

司法解释自公告发布之日起施行,但司法解释另有规定的除外。

Article 25 The judicial interpretation shall be promulgated in the form of the public announcement of the Supreme People's Court.

The judicial interpretation shall be published on the "Gazette of the Supreme People's Court" and the

"People's Court Daily".

The judicial interpretation shall be effective as of the promulgation date of the public announcement, unless otherwise prescribed by the judicial interpretation.

第二十六条 司法解释应当自发布之日起三十日内报全国人民代表大会常务委员会备案。备案报送工作由办公厅负责,其他相关工作由研究室负责。

Article 26 The judicial interpretation shall be submitted to the Standing Committee of the National People's Congress for filing within 30 days as of the promulgation date.

The general office shall be responsible for the work of reporting for filing, and the research office shall be responsible for other relevant works.

第二十七条 司法解释施行后,人民法院作为裁判依据的,应当在司法文书中援引。人民法院同时引用法律和司法解释作为裁判依据的,应当先援引法律,后援引司法解释。

Article 27 After the implementation of the judicial interpretation, if the people's court deems it to be the basis of the judgement, the court shall cite it in the judicial documents.

If the people's court simultaneously cites the law and the judicial interpretation as the basis of the judgement, the court shall cite the law first and then cite the judicial interpretation.

第二十八条 最高人民法院对地方各级人民法院和专门人民法院在审判工作中适用司法解释的情况进行监督。上级人民法院对下级人民法院在审判工作中适用司法解释的情况进行监督。

Article 28 The Supreme People's Court shall supervise the situation of local people's courts at various levels and the special people's courts concerning the application of judicial interpretations in the trial. The higher people's court shall supervise the situation of the people's court at lower level concerning the application of judicial interpretations in the trial.

六、编纂、修改、废止

VI. Compilation, Amendment and Repeal

第二十九条 司法解释的编纂由审判委员会决定,具体工作由研究室负责,各审判业务部门参加。

Article 29 The judicial committee shall make decisions on the compilation of judicial interpretations, the research office shall be responsible for the specific works, and various division of administration of justice shall participate in the said works.

第三十条 司法解释需要修改、废止的,参照司法解释制定程序的相关规定办理,由审判委员会讨论决定。

Article 30 If a judicial interpretation which is required to be revised or repealed, it shall undergo the relevant provisions of the judicial interpretation formulation procedure, and shall be deliberated and decided by the judicial committee.

第三十一条 本规定自2007年4月1日起施行。1997年7月1日发布的《最高人民法院关于司法解释工作的若干规定》同时废止。

Article 31 These Provisions shall be effective as of April 1, 2007. The "Several Provisions of the Supreme People's Court on the Work Concerning Judicial Interpretation" promulgated by the Supreme People's Court on July 1, 1997 shall be repealed simultaneously.